

April 2, 2009

The Honorable Gary Locke  
Secretary, U.S. Department of Commerce  
Office of the Secretary  
U.S. Department of Commerce  
1401 Constitution Ave, N.W.  
Washington, D.C. 20230

The Honorable Tom Vilsack  
Secretary, U.S. Department of Agriculture  
Office of the Secretary  
U.S. Department of Agriculture  
1400 Independence Ave., S.W.  
Washington, D.C. 20250

The Honorable Anna Gomez  
Acting Assistant Secretary, Deputy Assistant Secretary for Communications and Information  
Office of the Assistant Secretary, National Telecommunications Information Administration  
U.S. Department of Commerce  
1401 Constitution Ave, N.W.  
Washington, D.C. 20230

Dear Secretary Vilsack, Secretary Locke, and Assistant Secretary Gomez:

The "American Recovery and Reinvestment Act of 2009" (ARRA) charges the National Telecommunications Information Administration (NTIA) and the Rural Utilities Service (RUS) with the daunting task of *efficiently* disbursing \$6.85 billion dollars via grants for broadband infrastructure and adoption programs in *under 18 months*. Both agencies face incredible challenges. NTIA has limited staff and must focus on the DTV transition during the most critical period for disbursements. RUS staff is fully occupied disbursing funds from previously authorized programs. Neither can possibly complete the tasks assigned under ARRA without a very significant staff expansion. Even then, given the incredibly compressed timeframe, it will be almost impossible to review the anticipated thousands of applications most predict both will receive, much less rank the proposals according to ARRA-specified criteria, disburse the funds, and monitor grant specific implementations.

The States can help. Congress,<sup>1</sup> GAO<sup>2</sup> and even outside commentators<sup>3</sup> have recognized that these tasks *cannot* be accomplished without State assistance. While no approach is perfect, the best way to assure

<sup>1</sup> ARRA § 6001 specifies that the "Assistant Secretary may consult a State, the District of Columbia, or territory . . . with respect to (1) the identification of areas described in subsection (b)(1) or (2) located in that State; and (2) the allocation of grant funds within that State for projects in or affecting the State." Indeed, the Conference report characterizes § 6001 as "direct[ing] the NTIA to consult with States", and specifies that conferees "expect and intend that the NTIA...will seek advice and assistance from the States in reviewing grant applications, as long as the NTIA retains the sole authority to approve the awards." The "Broadband Data Services Improvement Act," Pub. L. 110-385, 122 STAT. 4096 (10/10/08), also funded by ARRA, at §106(i) is even more explicit, specifying that NTIA cannot give any entity funds UNLESS it is "the single eligible entity in the State that has been designated by the State to receive a grant under this section." {Emphasis Added} The conference report also specifies Congress expects NTIA to "assist the States in post-grant monitoring to ensure that recipients comply fully with the terms and conditions of their grants."

<sup>2</sup> *American Recovery and Reinvestment Act; GAO's Role in Helping to Ensure Accountability and Transparency*, Statement of Gene L. Dodaro, Acting Comptroller General of the United States, Testimony before the Committee on Homeland Security and Governmental Affairs, at 8 (GAO-09-453T March 5, 2009) In report after report, GAO has highlighted the need to minimize fraud, waste, and abuse in contracting by, among other things "contracting with state and local program officials and auditors in the planning and execution of contracts, agreement, and audits and other reviews."

<sup>3</sup> See, e.g., Bolen, Cheryl, *Carriers Say Net Neutrality Rules Will Stifle Build Out of Broadband*, BNA Daily Report (March 2, 2009) (Verizon Urges State Participation. Thomas Tauke, executive vice president . . . at Verizon, said . . . it was important to encourage states to play a role and ensure that the money is used appropriately."); Barbagallo, Paul, *Local-level Involvement Encouraged as Part of*



the bulk of the stimulus funds are targeted and expended in the most efficient manner possible is to, as Congress directed, rely extensively on the States. After all, States have intimate knowledge of their communications environment, geography, and demographics along with every incentive to make certain the money is not wasted and is properly targeted.

Rather than contracting with Washington, D.C. consultants that lack both the States' in-depth knowledge about the areas covered and the inherent incentive to do the job right, both agencies should structure the program to insure State involvement. They should ask State governors to specify an entity to review and rank all applications for all in-State projects based on NTIA/RUS criteria. As an incentive for States' involvement, the agencies should ask States to list top-ranked proposals up to – for the first round of funding – a “use or lose” **minimum** standard State allocation.<sup>4</sup> As the statute requires – NTIA (and RUS) will make the final decisions on the State recommendations and will disburse funds, assuming sufficient projects are recommended, *at least* up to the “standard State allocation.”<sup>5</sup>

The conference report specifies Congress expects NTIA to “assist the States in post-grant monitoring to ensure that recipients comply fully with the terms and conditions of their grants.” The Stimulus bill allows NTIA to dedicate up to 3% for administration of the programs. Like NTIA, States are also likely to need some temporary extra personnel to help with grant review as well as to audit/monitor and report back to the federal agencies on implementation. NTIA and RUS should allow each State that “opts-in” to seek sufficient funds to create two-to-four full time (job) equivalents immediately to do just that.


The advantages to this approach are obvious. It saves resources, puts the people with the information needed to make reasonable and rapid decisions in a strong advisory role, provides an additional layer of accountability, and significantly increases the chances that the money will actually get disbursed as States will have proper incentives to both opt-in and complete the task.

If you have questions about this proposal, feel free to contact any of the undersigned or call NARUC's General Counsel, J. Bradford Ramsay, at (202) 898-2207 or [jramsay@naruc.org](mailto:jramsay@naruc.org). We have also attached as an appendix an overview of positions on stimulus funding recently adopted by the National Association of Regulatory Utility Commissioners.

Sincerely,



Frederick F. Butler  
President, NARUC  
Commissioner  
New Jersey Board of Public Utilities



David C. Coen  
1<sup>st</sup> Vice President, NARUC  
Member  
Vermont Public Service Board

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*ARRA Grant Program*, TR's State NewsWire (March 17, 2009) ("The NTIA and RUS can consult with state officials in developing criteria and evaluating applications received from bidders, and both agencies have made it clear that they intend to do that, [said T. Lay, partner at the D.C. law firm of Spiegel & McDiarmid]"); Stanton, Lynn, *Wide Eligibility, State Help Advised for Broadband Stimulus Grants*, TR's State NewsWire (March 17, 2009) "In considering applications for grants . . . NTIA, along with [RUS], should look to the states for help in sorting through and prioritizing what are expected to be thousands of applications, panelists advised yesterday . . . As for a state advisory role on the ARRA broadband programs, Ms. Goldman said, "A strong state or local role is very important in the process" to help NTIA prioritize the expected thousands of applications.")

<sup>4</sup> We suggest for NTIA grants, that standard State allocation for the largest 51 jurisdictions be no less than 36 million. An additional minimum “standard State allocation” of about 15 million for the largest 51 jurisdictions should be available to encourage States to opt to review RUS proposals as well.

<sup>5</sup> If a particular State does not opt in to do the reviews, NTIA will review projects *de novo* for that State. But that State loses the opportunity to assure its citizens have an opportunity to receive the benefit of the allocation. If a State opts-in to do the review and ranking for NTIA and either there are insufficient projects submitted or the State fails to complete the task prior to the next Notice of Availability of Funds (NOAF) – those funds become available for NTIA/RUS disbursement under the second NOAF.



Tony Clark  
2<sup>nd</sup> Vice President, NARUC  
Commissioner  
North Dakota Public Service Commission



Susan D. Parker  
Current Executive Committee Member  
Commissioner  
Alabama Public Service Commission



Ray Baum  
Chair, NARUC Committee on Telecommunications  
State Chair, FCC Federal State Joint Board  
on Universal Service  
Commissioner  
Oregon Public Utility Commission



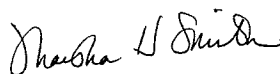
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Vice Chair, NARUC Committee on  
Telecommunications  
Member, FCC Federal State Joint Boards on  
Universal Service & Separations  
Member  
Vermont Public Service Board



Eddie Roberson  
Vice Chair, NARUC Committee on Consumer Affairs  
Chairman  
Tennessee Regulatory Authority



Anthony A. Price  
Chairman  
Regulatory Commission of Alaska



Marsha H. Smith  
Immediate Past NARUC President  
& Current Executive Committee Member  
Commissioner  
Idaho Public Utilities Commission



Stan Wise  
Former NARUC President  
Commissioner  
Georgia Public Service Commission



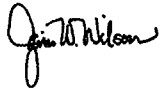
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Chair, NARUC Committee on Consumer Affairs  
Member, (Federal) Universal Service Administration  
Company Board of Directors  
Commissioner  
Nebraska Public Service Commission



Maureen F. Harris  
Vice Chair, NARUC Committee  
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Commissioner  
New York State Public Service Commission



Kate Giard  
Commissioner  
Regulatory Commission of Alaska



Janis W. Wilson  
Commissioner  
Regulatory Commission of Alaska



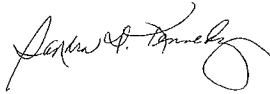
Olan W. Reeves  
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Arkansas Public Service Commission



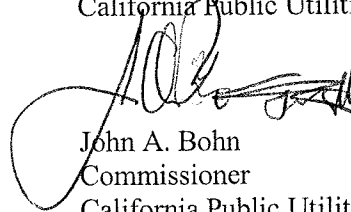
Kristin K. Mayes  
Chairman  
Arizona Corporation Commission



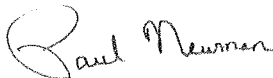
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California Public Utilities Commission



Sandra D. Kennedy  
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Arizona Corporation Commission



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Commissioner  
California Public Utilities Commission



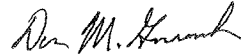
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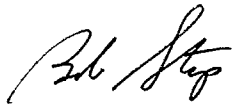
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State Co-Vice Chair, FCC Federal State Joint  
Conference on Advanced Services  
Commissioner  
California Public Utilities Commission



Gary Pierce  
Commissioner  
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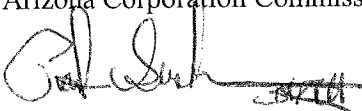
Dian M. Grueneich  
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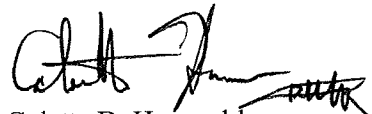
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Arkansas Public Service Commission



Ron Binz  
Chairman  
Colorado Public Utilities Commission



Colette D. Honorable  
Commissioner  
Arkansas Public Service Commission



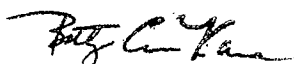
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Commissioner  
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James K. Tarpey  
Commissioner  
Colorado Public Utilities Commission



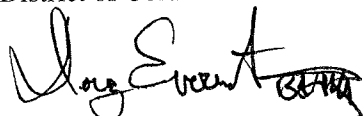
Anthony Palermino  
State Member, FCC Federal State Joint Board  
on Separations  
Commissioner  
Connecticut Department of Public Utility Control



Betty Ann Kane  
Member, FCC Federal State Joint Conference  
on Advanced Services  
Chair  
District of Columbia Public Service Commission



Richard E. Morgan  
Commissioner  
District of Columbia Public Service Commission



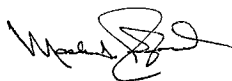
Doug Everett  
Chairman  
Georgia Public Service Commission



Lauren ("Bubba") McDonald, Jr.  
Vice Chairman  
Georgia Public Service Commission



Carlito P. Caliboso  
Member, FCC Intergovernmental  
Advisory Committee  
Chairman  
Hawaii Public Utilities Commission



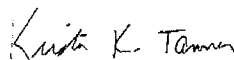
Mack A. Redford  
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Larry S. Landis  
State Chair, FCC Federal State Joint Conference  
on Advanced Services  
Member, FCC Federal State Joint Board  
on Universal Service  
Commissioner  
Indiana Utility Regulatory Commission



Gregory D. Server  
Commissioner  
Indiana Utility Regulatory Commission



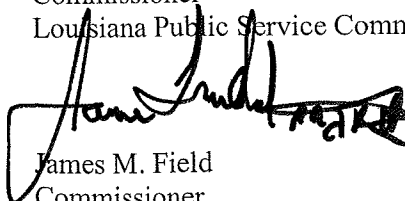
Krista Tanner  
Member, FCC Federal State Joint Conference  
on Advanced Services  
Board Member  
Iowa Utilities Board



Darrell Hanson  
Board Member  
Iowa Utilities Board



Foster L. Campbell  
Commissioner  
Louisiana Public Service Commission



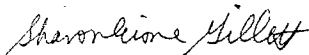
James M. Field  
Commissioner  
Louisiana Public Service Commission



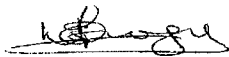
Vendean V. Vafiades  
Member, FCC Federal State Joint Conference  
on Advanced Services  
Commissioner  
Maine Public Utilities Commission



Allen M. Freifeld  
Commissioner,  
Maryland Public Service Commission



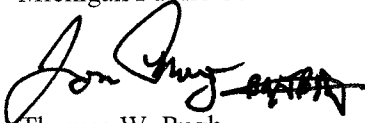
Sharon Gillett  
Commissioner  
Massachusetts Department of  
Telecommunications & Cable



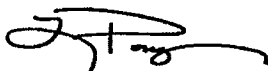
Orjiakor N. Isiogu  
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Member, (FCC) Telecommunications Relay  
Services Advisory Council  
Commissioner  
Michigan Public Service Commission



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Lynn Posey  
Chairman  
Mississippi Public Service Commission



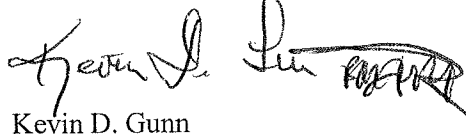
Brandon Presley  
Vice Chairman  
Mississippi Public Service Commission



Leonard L. Bentz  
Commissioner  
Mississippi Public Service Commission



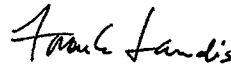
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Missouri Public Service Commission



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Chair  
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Frank E. Landis, Jr.  
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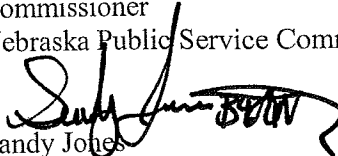
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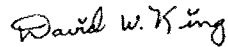
Rod Johnson  
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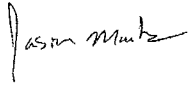
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Sandy Jones  
Chairman  
New Mexico Public Regulation Commission



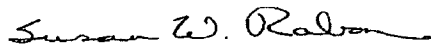
David W. King  
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New Mexico Public Regulation Commission



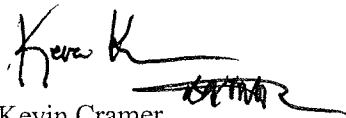
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New Mexico Public Regulation Commission



Lorinzo L. Joyner  
Commissioner  
North Carolina Utilities Commission



Susan W. Rabon  
Commissioner  
North Carolina Utilities Commission



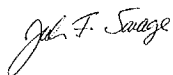
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President  
North Dakota Public Service Commission



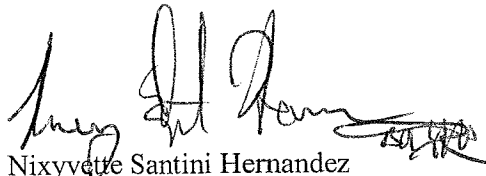
Brian Kalk  
Commissioner  
North Dakota Public Service Commission



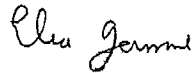
Lee Beyer  
Chairman  
Oregon Public Utility Commission



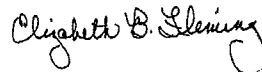
John Savage  
Commissioner  
Oregon Public Utility Commission



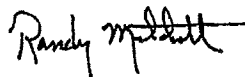
Nixyvette Santini Hernandez  
FCC Consumer Advisory Committee  
Associate Member  
Puerto Rico Telecommunications Regulatory Board



Elia Germani  
Chairman  
Rhode Island Public Utilities Commission



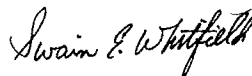
Elizabeth B. Fleming  
Chairman  
South Carolina Public Service Commission



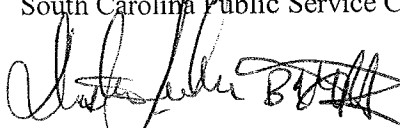
Randy Mitchell  
State Co-Vice Chair, FCC Joint  
Conference on Advanced Services  
Commissioner  
South Carolina Public Service Commission



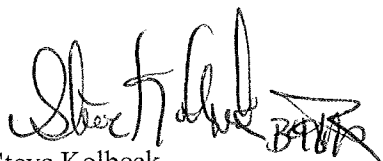
David A. Wright  
Commissioner  
South Carolina Public Service Commission



Swain E. Whitfield  
Commissioner  
South Carolina Public Service Commission



Dustin Johnson  
Chairman,  
South Dakota Public Utilities Commission



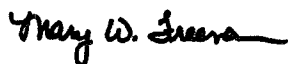
Steve Kolbeck  
State Chair, FCC Federal State Joint Board  
on Separations  
Vice Chairman  
South Dakota Public Utilities Commission



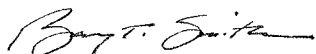
Gary W. Hanson  
Commissioner  
South Dakota Public Utilities Commission



Sara Kyle  
Director  
Tennessee Regulatory Authority



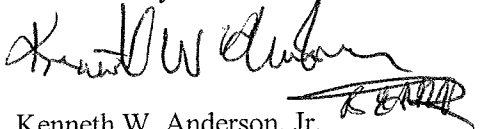
Mary W. Freeman  
Director  
Tennessee Regulatory Authority



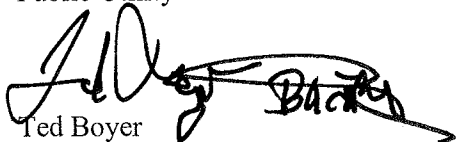
Barry T. Smitherman  
Chairman  
Public Utility Commission of Texas



Donna L. Nelson  
Commissioner  
Public Utility Commission of Texas



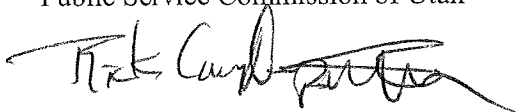
Kenneth W. Anderson, Jr.  
Commissioner  
Public Utility Commission of Texas



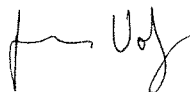
Ted Boyer  
Chairman  
Public Service Commission of Utah



Ron Allen  
Commissioner  
Public Service Commission of Utah



Ric Campbell  
Commissioner  
Public Service Commission of Utah



James Volz  
Chairman  
Vermont Public Service Board



Philip B. Jones  
Commissioner  
Washington Utilities & Transportation Commission



Eric Callisto  
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Lauren L. Azar  
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Public Service Commission of Wisconsin



Mark Meyer  
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Public Service Commission of Wisconsin



cc: Ken Kuchno, Director, Broadband Division, Rural Utilities Service, USDA  
Mark Seifert, Senior Advisor, NTIA  
Dr. Bernadette McGuire-Rivera, Associate Administrator,  
Office of Telecommunications and Information Applications, NTIA  
Michele Carey, NTIA, Advisor, NTIA  
James McConnaughey, Senior Economist, Office of Policy Analysis & Development, NTIA

## Appendix A SUMMARY OF NARUC POLICY ON STIMULUS FUNDING

### [I] CONSULTATION WITH THE STATES

- [A] *States ranks all in-State applications for NTIA/RUS (as constrained by NTIA/RUS-specified criteria) to review and approve based on a “use or lose” standard State allocation. NTIA/RUS define criteria broadly allowing each State to quickly rank applications and gives State interpretations great weight because of acknowledged expertise.*
- [B] *NARUC suggests the Standard State Allocation be at least 36 million for NTIA funds (and another 15 million if RUS applications are included).*
- [C] *States manage, monitor, and report quarterly – via NTIA/RUS approved template – on grants within a minimum standard State allocation (of 36-51 million).*
- [D] *NTIA allows States that “opt-in” to do the ranking sufficient funds to support 2-4 FTEs to assist State experts in both review and monitoring. If a particular State does not opt in to do the review, NTIA would have to undertake the review of projects for that State – and there would be no minimum State allocation of funds for that State. If a State opts-in to do the review and ranking for NTIA and either there are insufficient projects submitted or the State fails to complete the task prior to the next Notice of Availability of Funds – those funds become available for NTIA/RUS disbursement under the second NOAF.*
- [E] *NTIA/RUS requires applicants to contemporaneously submit proposals to States electronically (and in hard copy) via a common application, and conditions application on unrestricted State access to related information. This would include a contact person (phone and e-mail) that is available to answer questions from that State.*
- [F] *NTIA/RUS gets quick answers through conference calls and regular communications with States that have experience running successful grant, digital literacy, and mapping programs.*

### [II] AGGREGATION STATE ROLE

*States that have or are organizing public-private partnerships should be allowed to serve as “aggregators” for regionally-based or otherwise larger projects. All of the entities (both public and private) that are working together in partnership should be allowed to apply to NTIA as a group.*

### [III] STATE MAPPING PROGRAMS

*DATA REPORTING TEMPLATE: NTIA provides reporting template and assures States can provide (and audit) detailed data. Companies should be required to provide granular market and geographical service coverage data as requested by any public agency that seeks to measure the extent of broadband availability to allow policy makers to establish goals for future deployment.*

*GOVERNOR DESIGNATION TEMPLATE: With respect to the “up to \$350 million” in mapping funds NOAF, NTIA should provide a short template letter for State Governors’ use that specifies the applicant is the “State designated” entity for BB data collection as required by the statute.*

#### [IV] GENERAL POSITION ON ELIGIBILITY OF “ANY OTHER ENTITIES”

*Under the Statute, “to be eligible for a grant under the program, an applicant shall—(1)(A) be a State or political subdivision thereof . . . a territory or possession of the United States, an Indian tribe . . . ; (B) a nonprofit— (i) foundation, (ii) corporation, (iii) institution, or (iv) association; or (C) any other entity, including a broadband service or infrastructure provider, that the Assistant Secretary finds by rule to be in the public interest.” NARUC has been asked to comment on the public interest rule that NTIA should adopt regarding eligibility of “any other entity.”*

**PROPOSED MINIMUM STANDARD:** *The public interest standard in this instance must be informed by the purposes and goals of the underlying legislation. As “State or political subdivision thereof” includes State Public Utility Commissions, State broadband authorities, and State universal service administration agencies, at a minimum, a private firm/sole proprietorship/individual’s participation in BTOP should be considered as in the public interest when that entity is acting in partnership with those entities. Also, if NTIA finds the entity/person is applying to serve otherwise unserved citizens (where unserved means no facilities-based Internet access other than dial-up or satellite-based access) or the entity/person’s offering would improve the quality or affordability of broadband in an area (where quality is judged along multiple dimensions including bandwidth (in either direction), redundancy, and reliability) – the standard is met.*